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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,046	04/15/2004	Richard J. Mackool	103471-51150	7400
26345	7590	06/09/2006	EXAMINER	
GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE 1 RIVERFRONT PLAZA NEWARK, NJ 07102-5497			MCCORKLE, MELISSA A	
		ART UNIT		PAPER NUMBER
				3763

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/825,046	
Examiner	Art Unit Melissa A. McCorkle	
	3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 05 May 2006.  
2a) This action is FINAL.                    2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.  
4a) Of the above claim(s) 6-11 is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 1-5 & 12 is/are rejected.  
7) Claim(s) \_\_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.                    4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

## DETAILED ACTION

1. Applicant's arguments, see page 2, last paragraph – page 3, filed 5/5/06, with respect to the rejection(s) of claim(s) 1-5 under USC 35 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Strukel (5,741,226.)

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Strukel (5,741,226). Strukel et al discloses a sterilized barrier apparatus, comprising a sterile, tubular sheath (fig 51-part 88 it is inherent that the apparatus is sterilized since sterile fluid runs through it), that is collapsible into a collapsed condition (fig 52) and expandable from the collapsed condition into an expanded condition (fig 51), a hollow extension tube (claim 3) secured to a distal end of the sterile, tubular sheath; and an aspiration tube (fig 4) having a distal end to which is attached the hollow extension tube (claim 3), the sterile, tubular sheath being secured to the aspiration tube at a location (fig 51-52) spaced from the distal end of the aspiration tube and being in the expanded condition (fig 51); further comprising a surgical pack that includes the aspiration tube (fig

4), the surgical pack including a cassette (fig 5, "cassette" as defined in the specification is a "collection vehicle into which the removed fluid, tissue, etc is deposited") arranged to receive contents of the aspiration tube having a proximal end closer to the cassette than the distal end of the aspiration tube, the location where the sterile, tubular sheath is secured to the aspiration tube being closer to the proximal end than to the distal end of the aspiration tube (fig 4-5); further comprising an instrument console (fig 4-5) with suction pump that, when activated, suctions the aspiration tube, the aspiration tube projecting from the instrument console.

3. Strukel discloses the apparatus in claim 1 as stated above, further comprising a surgical handpiece (fig 4-5, part 11) attached to the distal end of the aspiration tube (fig 4-5); or wherein a surgical handpiece is attached to a distal end of the hollow, extension tube (claim 3); or wherein the sterile tubular sheath is configured so as to be collapsible into the collapsed condition in an accordion fashion (fig 52).

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Moustafis et al (6,960,182) discloses Fluid Jet Surgical Instruments; Rabiner et al (6,524,251) discloses Ultrasonic Device for Tissue Ablation and Sheath for Use Therewith; Dryden (3,902,500) discloses Endotracheal Catheter with Means for Positive Ventilation and Sterile Technique; Hampson (4,327,735) discloses a Catheter Assembly; Staub (4,014,342) discloses a Vitreous Cutter; DeStefano et al (6,282,442) discloses a Multi-Fit Suction Irrigation Hand Piece; Blake (6,280,449) discloses Ophthalmologic Insertor Apparatus and Methods of Use.



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